

**THE RULE OF LAW AND THE PROTECTION OF WOMEN AND CHILDREN
OBAFEMI AWOLOWO UNIVERSITY**

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LAGOS, NIGERIA
OCTOBER 2005**

I. Introduction

I would like to begin by thanking Obafemi Awolowo University for hosting this event and for inviting me here today. Special thanks to the Vice Chancellor and other members of the senior administration and the faculty for their warm welcome. I also thank the U.S. State Department and the U.S. consulate here in Lagos for its support of this program, although my comments represent only my own views, not those of the United States government or of the consulate. Finally, thanks to all of you for attending. It is a privilege and an honor to have the opportunity to speak with you today.

I have been asked to discuss Rule of Law and the protection of women and children. This is such an important topic, and it is so gratifying to see so many women, including so many young women, among you today. It is also wonderful that there are some men in the audience today.

Let me first say what today's talk will *not* be. First, I am not here pretending to come from a society where women and men have achieved true equality. Indeed, a recent report issued by the National Organization of Women reports that equality for women in the U.S. is something of a myth, and that the U.S. is outdone in these respects by at least 16 countries, including Estonia and Lithuania. The study reports that women's wages are still below those of men; that women are penalized for taking maternity leaves; and that women's employment opportunities are not the same as those enjoyed by men. And the substantial progress American women have made has taken more than 200 years of democratic rule to achieve. Full protection of women's rights and the rights of children can be a long and difficult process.

Nor do I come here advocating exporting my legal system into your country. Your historical, social, religious, and economic framework is very different from that of America. Only you have the requisite knowledge, experience, and sensibilities to define the ways in which the rule of law can operate to protect women and children in Nigeria.

II. Definitions

At the outset, there are challenging definitional issues. What is rule of law? What is democracy? Both terms are ubiquitous and hard to define; they are imbued with ambiguity and complexity, and they can mean many different things. And although they are different terms with different connotations, there is substantial overlap

between them. But let me add that, despite these complexities, you do not need to be trained in the law to be able to speak intelligently and eloquently about these subjects. They are topics that everyone can understand and talk about.

Rule of Law

In essence, rule of law refers to having rules that are established, known accepted, and respected – by both government and non-government actors. Rule of law invokes a predictable legal system with fair, transparent, and effective judicial institutions to protect citizens against the arbitrary use of state authority and lawless acts. Rule of law also implies a set of procedures and processes for the resolution of disputes that are accessible and fair to all. Rule of law is considered to be a cornerstone of a well-functioning democracy. A society built on rule of law promotes stability and order; the absence of the rule of law provides fertile ground for corruption. Rule of law provides confidence in the legal system and its ability to enforce its promises.

Democracy

Democracy is most often associated with free, fair, and regular elections with universal or near universal right to vote, in which more than one political party actively participates. I prefer a more functional definition of democracy – one that includes not just formal political processes such as elections – important as they are; one that also embraces the notion of reciprocity – between the government and the governed, and a general sense of trusteeship – that government exists for the common benefit. If that trust is broken, then the accountability mechanisms of democracy are called into play to demand a government that does act for the public good.

Importantly in this context, a democratic system is marked by principles of equality for all, regardless of gender, religion, class, or race.

As such, notions of rule of law and democratic institutions go hand in hand. It is not possible to have a thriving rule of law without sustainable democracy – such a rule of law would lack the confidence of the public necessary to survive. And democracy without rule of law likewise would be fragile and without credibility.

What I would like to do today is to share with you some thoughts about rule of law and democracy and the protection of the rights of women and children.

III. Women's Rights in Nigeria

A. Protections provided by international and federal law

Nigeria is a signatory to many of the great international conventions for the protection of women's rights and the rights of children. These include:

- The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);

- African Charter on Human Rights and People's Rights and the Rights of Women in Africa;
- The U.N, Convention on the Rights of the Child; and
- The African Charter on the Rights and Welfare of the Child

Nigerian federal law provides for equality in its constitution by declaring that “[e]very citizen shall have equality of rights, obligations and opportunities before the law.” It also guarantees the right to be free from discrimination “either expressly by, or in the practical application of, any law” on the grounds, *inter alia*, of sex. The government has also adopted a National Policy on Women in an attempt to fully integrate women into social and political life and has established a Ministry of Women Affairs and Youth Development.

B. The Reality of Women's Rights in Nigeria

Despite these myriad protections, women in Nigeria do not have equality and continue to suffer from numerous forms of discrimination. This includes violence, both domestic and otherwise; lack of access to justice; criminal prosecutions of women who are raped or who choose to have pre-marital sex, and complicity and corruption in the police that make matters worse; lack of criminal prosecutions of those accused of domestic violence; sexual harassment at the workplace; cultural practices like female genital mutilation, child marriage, polygamy, and inheritance issues; human trafficking; and a lack of involvement at all levels of civic, political, and economic life.

So there is still much to be done.

IV. Essential Elements of Rule of Law and Women's/Children's Rights

I will focus my remarks today on 6 specific elements of rule of law and good governance that I see as essential to the promotion of the rights of women and children. There are of course many others that I could discuss, but I hope that these will give us a useful starting point for this dialogue. They are:

1. Taking an active role in Nigeria's political life;
2. Transparency and accountability in government;
3. A free and robust press representing the views of women;
4. Rules that promote property ownership, investment and development, and equally so for women;
5. An independent judiciary with the authority and ability to protect these rights; and
6. An educated and civic minded public.

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I would like to say a little about each of these elements.

A. Taking an Active Role in Nigeria's Political Life

I urge all Nigerians –and especially those with a special interest in the rights of women and children – to exercise the right to vote. And insist on your right to vote! In the United States, we still hear allegations of certain voters – particularly blacks in the southern part of the country – being denied access to the polls. This is unacceptable in any democracy, as the right to political participation is one of the very essential elements of democratic rule of law. Vote, and insist that your rights to do so are not compromised.

Urge women and others concerned about the rights of women and families to run for elective office. Seek out highly qualified persons to run on these platforms.

In terms of legislative reform, I see a great and immediate need for the harmonization of Nigerian law to meet the goals promised by constitutional and international principles embraced by your country. Until national law actually provide for the equality promised, they remain simply a list of goals and aspirations, lofty as they may be. You must lobby your legislatures at the national and local levels until these goals take on the full measure of their promise.

Use your great electoral power to lobby your government at the local and national levels for change. Decide what issues are most important to the protection of women and children's rights and insist that the government address them. They can be very large issues such as the wholesale domestication of international treaties into Nigerian law. But they should also include immediate protections that are needed – shelters for families ravaged by domestic abuse; public awareness programs on family planning, health care issues, and the prevention of HIV/AIDS; laws that make domestic violence subject to criminal law; laws that require universal and free education; laws that provide rehabilitation and life training and other support services for women and children that have been abused or subject to trafficking; promotion of adult literacy and vocational and professional training for women; laws that create job opportunities for women; laws that provide for equal inheritance and property ownership rights; laws that establish a minimum age for marriage; laws that make readily available in simplified form and in several languages what the rights of women are; and laws that make available free legal advice to women in need; the list of course could go on.

Women, representing about half of the population of this great country, have the power to be a major political force. It is a force that should be exercised responsibly and forcefully.

B. Transparency and Accountability in Government

Government must be transparent, which means that government policies and practices must be subject to scrutiny by the press and the public. I do not know of, nor can I imagine, a government in the world that can achieve true accountability without transparent government operations. In the United States, we have certain laws that require the government to open its processes to the public. The two best known of these laws are freedom of information laws and sunshine laws. Both of these were adopted in the wake of confidence lost in our federal government during the Nixon years.

Freedom of information laws allow any interested person to seek information about how the government reached any specific decision. Of course our federal Freedom of Information Act (known as FOIA) has some exceptions, some of which have been subject to bitter judicial proceedings. But in general, the public has a right to see the back up, if you will, of government action. In recent years, FOIA and similar state laws have been modified to instead require government agencies to publish much of what would have been available through FOIA electronically, given the broad access we have in the U.S. to the internet. Sunshine laws similarly seek to open government processes to the public but in this case by requiring that government meetings be held open to the press and the public – again, with some exceptions.

Perhaps most important is the development of a culture of good governance, a culture of government legitimacy. This is possible only when a State is able to begin to attract and recruit the best and the brightest and the most dedicated people to run for elective office; when those offices offer the promise of promoting society's goals rather than one's own personal interest; when those offices are imbued with respect and prestige -- because they are worthy of such respect and prestige.

Insist that your elected representatives exercise the privileges of their offices with the rights of all citizens – women and children included – in mind. Insist that the rights of women and children become an important priority and demand evidence that it has become a focus of their efforts.

C. A Free and Robust press

It almost goes without saying that a free and robust press is essential to rule of law and democratic development. Even with the most transparent and accountable laws, there can be no effective mechanism for the protection of rights without a vigilant press.

The press must be free. It cannot be an arm or extension of the government. It cannot be subject to undue interference or control by the government so that it can report freely and openly on matters of concern – including problems within the government – without fear of recrimination or violence. This is the only way to have a truly informed citizenry – one that can petition the government for redress or prompt a change in those who govern. Without a free and open press, government malfeasance can go unnoticed and thus unrectified.

To give a recent example from the U.S.: You may have heard that after hurricane Katrina there was an outburst in the press about the performance of FEMA – the Federal Emergency Management Agency. Although President Bush at first was firm in his support of Michael Brown, the director of that agency, the virulent press attacks on the President for ineptness and cronyism ultimately led to Brown's removal from his post. I am not at all certain that the same result would have occurred without the vigilance of the press in bringing to the attention of the public the incompetence with which the situation was handled.

Finally, a free and open press can promote public discourse and dialogue on issues of public concern. It is by open and free discussion and debate that the merits and drawbacks of specific actions and positions can be brought to light.

Women should get actively involved in the press – by instigating media campaigns to promote their interests, or by becoming journalists. In order to represent the needs of the entire community, the entire community must have full access to and representation in the press.

D. Rules that Promote Property Ownership, Investment and Development, and Equally so for Women

As United Nations Secretary General Kofi Anan said, “[g]ood governance is perhaps the single most important factor in eradicating poverty and promoting development.” If women are excluded from property ownership and other rights, they will be deprived of the right to take a full and active role in the economic life and development of the country. Ownership of property creates the possibility of borrowing money with that property as collateral. Without the assurance of stable and protected property rights, a lender will lack the certainty to loan money that will enable the property’s development.

Property rules must provide for free ownership, use, and transference. Real property rights must be secured by a land title and registry system that can adequately title, record, and map assets. Reliable title guaranty services should be developed so as to identify any prior mortgages, liens, judgments, or other encumbrances. Reliable physical surveys and plat maps of property must be developed so that there is a clear basis of owner entitlement. Government regulations should not be so extensive as to discourage those who might want to enter the market. Strong property laws should be accompanied by laws on contract, tort, corporate organization and governance, labor regulation, monetary policy, financial markets, antitrust, and trade.

And women must have equal access to property and the same rights as do their male counterparts. There can be no discrimination in laws on property ownership, inheritance, etc. Likewise, programs should be initiated to provide loans for female entrepreneurs.

E. An Independent Judiciary with the Authority and Ability to Protect These Rights

An independent judiciary is perhaps the single most important institutional safeguard of the rule of law. The independence of the judiciary from political pressures and from the other branches of government is an essential aspect of justice at any level. Judges must be dedicated and conscientious that the rights of parties are not compromised by illegal or illegitimate considerations. Judicial salaries must be high enough to attract able jurists and to avert the lure of corruption; and the judicial branch should have adequate funding to carry out its functions efficiently and effectively, always in a manner that inspires the public confidence. Your great Justice Oputa was quoted as saying as follows:

Our constitution speaks audibly and eloquently of Freedom, Equality and Justice. But a clash may occur between constitutional ideals and political and social realities. Hence there is a need for an umpire or referee to settle the ensuing disputes. The courts play that important role. It is only the judiciary which can, in the final analysis and as the last resort, translate the dreams of Nigeria.... Our ... Supreme Court ... can translate into actuality the noble ideals expressed in our Fundamental Law and give flesh and blood – in fact life – to the abstract concepts like Freedom, Liberty, Equality and Justice clearly articulated and reiterated in our constitution.

The judiciary also needs to have rigorous enforcement powers so as to give “teeth” to court rulings. Court judgments that carry no enforcement powers are completely ineffective.

The judiciary must have sufficient resources in order to fulfill its function, and judges must have decent living and working conditions. The judges’ work must be supported by a capable administrative staff.

If appropriate, alternative forms of dispute resolution should be developed so that parties can choose the dispute resolution forum that best suits their needs and the nature of the dispute. Arbitration and mediation procedures may provide excellent recourse in certain situations.

Other instruments of transparency should be developed consistent with what has become known as “due process.” Just to give some examples from the American experience: court proceedings that are in all but the most unusual circumstance open to the press and the public; and judicial decisions that are published and readily available, and that contain a statement of the reasoning of the court.

I do not know the extent to which women serve as judges in Nigeria, but that should certainly be a goal – that able female lawyers be represented in adequate numbers at all levels of the judiciary – including the Supreme Court.

F. An Educated and Civic Minded Public

I now reach the final point: the need for an educated and civic-minded public guided by brave, educated people. If you have been asking yourselves throughout thus talk, “how do we accomplish any of these objectives?,” the answer I offer is that “it begins with you, the people of Nigeria”

The people at large need to know and understand their rights. Education must begin very early – and continue through old age. Primary school education should include courses on civic duty. If it does not, such courses should be added. If they cannot be added, then interested parents and community leaders should take it upon themselves to make such lessons available on an extra-curricular basis, and such lessons should continue throughout a child’s education. Adult lessons in civility should be offered so that those who do not receive a formal education and those who have already reached maturity do not constitute a generation lost to their civic duty. The

more educated the citizenry about what they can and should expect from their government, the more pressure the leaders will feel to conform.

The beginning of dialogues across this country will inevitably result in the development of associations of like-minded individuals -- student groups, professional organizations, social groups, groups of whatever form. Volunteer for one of the Nigerian or international NGOs that works on behalf of the rights of women and children. Along with the press, such groups can be vigilant watchdogs over the operation of the government and call government actors to account for perceived improprieties. One such important group from my personal perspective as an attorney is a fearless bar devoted to the rights of women and children because of the unique position of lawyers in society and their access to the instruments of justice.

In short, the people, and in particular women and those who speak with their interests in mind, must be willing participants in defining and maintaining democratic institutions and rule of law principles. They cannot be spectators; they must be the driving force. And their participation must take the form of a continual engagement and spirited democratic discourse. An educated, informed, and interested citizenry begins with you – vibrant women interested in the rights of women and children– who can help make this dream for Nigeria a reality.

Conclusion

I want to conclude my remarks with a challenge – several challenges -- to each of you:

First, find a mentor – someone older and more experienced than you, someone you admire and respect, someone you can learn from.

Second, be a mentor – reach out to someone younger and less experienced than you, someone who can learn from your life experiences.

Third, form groups of colleagues, classmates, and friends to discuss issues of common concern to you. Do not feel that you need a high rate of “legal literacy” in order to talk about rule of law issues! By engaging in ongoing dialogues – at whatever level, in whatever form -- you can learn more about what issues of concern you confront and how best to address them. Talking also creates bonds of sisterhood.

Finally, do not feel that the promotion of women’s and children’s rights needs to be a challenge only for women. Reach out not only to your sisters but also to your like-minded brothers. They understand that the rights of women and the rights of children are inextricably linked to “human” rights. Their participation in your battle will add credibility and insights and I hope that they will embrace your mission as you seek to include them.

Thank you for your attention, and I look forward to your questions and comments.